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Supreme Court of the United States

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OCTOBER TERM, 1934.

No. 2.

THE UNITED STATES, PETITIONER,

VS.

THE CREEK NATION, RESPONDENT.

BRIEF FOR RESPONDENT.

E. J. VAN COURT,
PAUL M. NIEBELL,
W. W. SPALDING,
Counsel for Respondent.

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THE CREEK NATION, RESPONDENT.

BRIEF FOR RESPONDENT.

MAY IT PLEASE THE COURT:

This is an appeal granted by this court to the United States from a decision of the Court of Claims holding that respondent was entitled to recover the amount of $86,823.19 for the value of 5,575.55 acres of land owned by the Creek Nation, respondent.

Before proceeding with our argument, let us suggest that the decision of the Court of Claims in this case has not the wide application that opposing counsel evidently believe. Other than the Five Civilized Tribes only one very small tribe holds its land under a fee simple title, and in so far as these six tribes are con-

cerned, there are but very few cases involving the question before us. Since the "wild tribes," as they are commonly referred to, hold only "a right of occupancy" to land, the question in this case can have no application to them.

STATEMENT OF THE CASE.

This is an action filed in the Court of Claims by respondent, the Creek Nation, against the United States under a special jurisdictional act approved May 24, 1924 (43 Stat. 139), which act is fully set out in the special findings of fact (R. 4 and 5). All of the material facts, and all of the relevant portions of the treaties and acts involved, appear in the special findings of fact of the court below (R. 7 to 11).

The opinion of the court below in this action is fully set out in the record, pages 12 to 21.

ISSUES IN COURT BELOW.

In this case the defendant below is petitioner, and the plaintiff below is respondent.

Plaintiff, the Creek Nation, contended (R. 14) that since it owned this land in fee simple, and since the Court of Claims was unable to render a judgment, either putting it in possession of the land or requiring defendant, the United States, to enforce the acts of Congress passed for its benefit, and thereby place it in possession of the land, it should be entitled to recover the value of the land as of the date of filing the petition herein.

Defendant admitted its liability to pay plaintiff for the land in question, but contended (R. 14) that there was a "taking" of the land, either in 1873 or in 1891, and that plaintiff should recover the value of the land as of one of these dates, and not later.

The above issue was the sole one presented to the trial court, and upon which it held that plaintiff was entitled to recover the value of the land as of the time of filing the petition in this case.

NEW ISSUES INJECTED BEFORE THIS COURT.

By raising questions of jurisdiction, petitioner has undertaken in the petition for certiorari to raise several issues not before the court below, and, in effect, to obtain a trial *de novo* in this court. After making clear our position upon the issue presented to the court below, we will discuss this new matter thus injected by petitioner.

ARGUMENT.

By the Treaty of February 14, 1833 (R. 7), the United States granted in fee simple to the Creek Nation a large body of land in what is now the State of Oklahoma.

By the Treaty of June 14, 1866 (R. 7), the Creek Nation ceded "the west half of their entire domain" to the United States, and it was agreed by such treaty that the Secretary of the Interior should cause a north and south line dividing the ceded territory from that retained, "to be accurately surveyed."

In 1871, Frederic W. Bardwell, pursuant to the provisions of the above-mentioned treaty, surveyed a line intended to be the division line provided by said treaty (1866). However, this line was not "accurately surveyed," and it was later discovered that the Bardwell line took a portion of the land retained by the Creek Nation under the treaty.

Following a controversy on this score, Congress, by the Act of March 3, 1885 (R. 8), made provision for the withholding from the Creek Nation of certain payments due it on other matters unless it should accept without reservation or condition this erroneous Bardwell line. This mandate was duly accepted by the Creek Nation through its council, and the Bardwell line, right or wrong, thus became (without compensation to the Creek Nation for land taken by it) the line between the ceded territory and that retained by the Creek Nation (R. 7 and 8).

Just at this point, let us pause to impress upon the court that although the Creek Nation thus lost, without compensation, a portion of its domain, retained and guaranteed to it by the Treaty of June 14, 1866, by being forced to accept the Bardwell line, yet it makes no claim for payment of these lands in this suit. Since our interpretation of the special jurisdictional act, under which the Creek Nation is permitted to sue the United States, is that only suits can be brought which are based upon treaties or acts of Congress passed for its *benefit,* it would be precluded from attacking this Act of 1885, which does "take" or confiscate Creek lands. The whole effect of this Act of 1885 (R. 8) was to establish most solemnly and firmly the Bardwell line as the west boundary of the Creek Nation. It will also be noticed that the Bardwell line was, by Section 1 of the Act of Congress approved May 2, 1890 (26 Stat. 81, 82), made a part of the boundary line between Oklahoma Territory and the Indian Territory (R. 8).

Inception of the Present Controversy.

In 1867 the United States granted to the Sac and Fox Indians a portion of the Creek lands ceded by the Treaty of 1866, located immediately west of the Creek reservation and divided from it by the Bardwell line (Finding VII, R. 8, 9).

E. N. Darling in 1872 divided the Sac and Fox reservation into sections. Darling erroneously ran his division lines into the Creek domain, and his closing corners were placed some distance beyond the Bardwell line and upon land owned by the Creek Nation. Later,

one Hackbush resurveyed Darling's section lines, and subdivided the sections into 40-acre tracts, perpetuating the errors so made by Darling (R. 9 and 13).

Let us here make one thing clear—Darling and Hackbush *ran* no boundary lines, but Darling's "closing corners," placed east of the Bardwell line, *made* a line; hence we have what may be *called for convenience,* the Darling "line." It is evident, from a reading of the record, that Darling commenced his work of sectionizing in the western part of the Sac and Fox reservation, and when reaching the Bardwell line, ran across it merely for the purpose of avoiding the making of a tier of fractional sections. Without discovery of the errors, the Darling and Hackbush surveys were approved by the Commissioner of the General Land Office (R. 9).

Still without discovery of the errors, in 1891 the Sac and Fox reservation was declared public land and opened to homestead settlement (R. 9, 10).

Following the opening of the land to settlement, numerous complaints were made to the Indian Office and to the Land Office as to the conflicting claims of homesteaders and Creeks to the land in question. The United States Geological Survey, therefore, in 1895 and 1896, resurveyed the west boundary of the Creek Nation as surveyed by Bardwell in 1871. From these surveys the errors made by Darling clearly appear, and the fact was established that 5,575.55 acres of Creek land lay between the Bardwell line and the Darling "line." The Creek Nation, from that time until now, has continuously and persistently asserted its right and title to the land, and has repeatedly urged before Congress

its right to be restored to the possession of the same (R. 13 and 14).

Controversy Placed Before Congress.

In 1906 this controversy was brought to the attention of Congress. Congress at the time was informed of all the facts relating to plaintiff's claim. The record discloses that committees of both the Senate and House had repeatedly made exhaustive investigations as to every phase of the controversy (R. 17). Congress, after a full investigation, by an act approved June 21, 1906 (34 Stat. 325, 364), declared:

> "That the boundary line between the Creek Nation, Indian Territory, and the Territory of Oklahoma, as surveyed by Frederic W. Bardwell in eighteen hundred and seventy-one, and re-established by the Geological Survey in eighteen ninety-six is hereby declared to be the west boundary line of the Creek Nation."

Of this act the Court of Claims, in its opinion (R. 17), says:

> "The Act of June 21, 1906, must be regarded as conclusive as to the Creek Nation's right and title to the land in controversy as of that date. The act clearly contemplated the restoration of the land to the Creek Indians through appropriate administrative action."

At the same session Congress, undoubtedly with the present controversy in mind, and to give the administrative officers of the United States Government full power to remedy the condition now before us, also

passed Section 18 of the Act of April 26, 1906 (34 Stat. 137), the relevant parts of which are as follows:

> "Sec. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes • • • for • • • recovery of any land claimed by any of said tribes • • •, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits • • •."

That above act, although permissive in form, was in fact mandatory, is well settled. 25 R. C. L. 770; *Supervisors* v. *United States,* 4 Wall. 435, 18 U. S. (L. Ed.) 419; *French* v. *Edwards,* 13 Wall. 506, 20 U. S. (L. Ed.) 702; *Jaffray* v. *McGehee,* 107 U. S. 361, 27 U. S. (L. Ed.) 495.

No Action Taken by the Administrative Officers of the United States.

What has been done since the passage of the Act of 1906? *Nothing.* The Court of Claims, in its opinion (R. 18 and 19), says:

> • • • "The patents issued to settlers for the land being void, it was within the power of the Government to secure their cancellation, *United States* v. *Minnesota* (207 U. S. 181), and to restore the land to the plaintiff. Government officials having charge of the affairs of the Creek Nation took no steps to have the erroneous patents canceled and possession of the land restored to the plaintiff after the passage of the Act of June 21, 1906, and the matter was allowed to drift until May 24, 1924, when jurisdiction was conferred on this court to 'hear, examine, and adjudicate and render judgment' on the plaintiff's claim.

• • • "It has been within the power of the Government, at all times since the erroneous inclusion of the plaintiff's land in the Sac and Fox Reservation, and since it was erroneously opened to settlement and patented to homesteaders in 1891, to have the value of the lands appraised and to pay for the same by direct appropriation by Congress, or to, by an appropriate jurisdictional act, authorize the plaintiff to bring suit on its claim and have the value of the lands in controversy judicially determined. Had the Government pursued either of these courses the plaintiff would have been entitled to receive and would have received the value of its lands as of the date of its compensation for them. However, nothing was done to right the great wrong perpetrated upon the plaintiff, by the repeated errors of the Government, until it was given the right to bring suit in this court under the Act of May 24, 1924, • • •."

To Sue for the Value of This Land in This Action Is the Only Possible Relief Available to the Creek Nation.

As we have seen, this whole matter was exhaustively brought to the attention of Congress in 1906, and that from that date to the present day the administrative officials of the Government have utterly failed to take any action under the statutes passed for the benefit of the Creek Nation.

Here we have a peculiar situation—one which has never occurred before in all history, and is most unlikely to occur again: The Creek Nation, a political entity, owns this land in fee simple, but for over forty years has not been permitted to enjoy it, for the reason that the petitioner, through its administrative officers, is the only one that could enforce its rights in the courts. These officers have failed and refused to act, and have permitted a con-

tinued and unlawful intrusion upon these lands, making them as useless to the Creek Nation as though the Creek Nation did not own them. Although the Creek Nation's title has been in no way impaired or destroyed, yet, let us repeat, this fact of its ownership is, in so far as any enjoyment has resulted or will result, a mere empty word.

By the special jurisdictional act under which this suit is brought, the Creek Nation, for the first time in its history, is permitted to sue in its own name. In conferring this right upon the Creek Nation Congress selected a forum in which this claim could be heard, a court of its own choosing, which could give judgment only against the United States, and which can render a money judgment only. This act also provides that this claim shall be forever barred if not brought within five years after the passage of this act.

Had Congress so elected, it could have placed the Creek Nation in the same position it had placed the administrative officers, and thus permitted it to bring suit in a court which could have entertained an action in ejectment, and which could have granted a recovery of its land, but, instead, it has confined the Creek Nation to the relief which we now seek.

As we have said before, this is, indeed, a unique situation. Were the Creek Nation *sui juris* it could of itself terminate this unwarranted and continued intrusion upon its lands—an intrusion which could now be terminated by the United States and which it is the duty of the United States to terminate. Since this intrusion utterly deprives the Creek Nation of the value of these

lands, and will for all time continue to deprive it of their value, to make the Creek Nation whole the only measure of damages which could possibly be fixed is the value of the land.

Petitioner's Original Contention in the Court Below.

As we have heretofore stated, the sole issue in the court below upon which the case was tried, was the date at which the value of the land involved must be fixed. In its opinion (R. 14) the Court of Claims says:

> • • • "Up to this point in the case the plaintiff and the defendant are in substantial agreement. They agree that the 5,575.57 acres of land involved lie between the Bardwell line on the west and the Darling line on the east; that it was erroneously included as a part of the Sac and Fox Reservation by Darling in his survey, and that the plaintiff is entitled to compensation for the value of the land. The real issue between them is the question of the value of the land. The determination of this question hinges entirely upon the date at which such value is rightly computable. The ascertainment of this date, therefore, is the first question for decision • • •"

Thereafter, the trial court in its opinion (R. 14, 15), gives at length the contention as stated in petitioner's brief filed in the trial court. In summing up this contention, it states:

> • • • "In other words, did the administrative act of the Commissioner of the General Land Office in approving an erroneous survey divest the plaintiff of its fee title to the land involved—a thing that Congress itself could only do, and that by the use of specific language leaving no room for doubt as to its intention? We think not • • •"

The trial court further says:

> • • • "The defendant cites no authority in support of the contention • • •, and we know of no authority that does support it."

To the contrary, all the authorities hold that a "taking" is not accomplished by an act of an executive officer of the Government, unless such authority is delegated to him in plain and unambiguous language. *Bigby* v. *United States*, 188 U. S. 400; *United States* v. *North American Transportation & Trading Company*, 253 U. S. 330, 334; *United States* v. *A Certain Tract of Land in Cumberland Tp.*, 70 Fed. 940; *United States* v. *Rauers*, 70 Fed. 748; *Boston, etc., R. Corp.* v. *Salem, etc., R. Co.*, 2 Gray. 36.

The Act of June 21, 1906 (34 Stat. 325, 364), Is Decisive of the Fact That There Was No "Taking" Prior Thereto.

We deem it useless to weary the court with an extended argument to prove that petitioner's contention below, that there was any sort of a "taking" prior to 1906, is entirely without merit, for we have shown above that by the Act of June 21, 1906, *supra*, Congress itself with the whole controversy before it has declared to the contrary. We believe that we can urge without hesitation that this Act of 1906 is absolutely conclusive against the contention of petitioner which we have discussed. Petitioner does not claim, nor could it claim, that there has been any "taking" since the passage of the Act of 1906, for nothing whatever has been done to alter the situation as it stood in 1906.

The trial court, in discussing the Act of June 21, 1906 (R. 18), says:

> "Under these circumstances, and with the undoubted intent and purpose of settling definitely all questions growing out of the various treaties, statutes, and administrative acts of officials of the Indian Office and the General Land Office dealing with the title to the land in controversy, Congress again, as it had done in the Acts of March 3, 1885, March 1, 1889, and May 2, 1890, declared the Bardwell line to be the western boundary of the Creek Nation. The Act of June 21, 1906, must be regarded as conclusive as to the Creek Nation's right and title to the land in controversy as of that date. * * *"

RESPONDENT'S REPLY TO PETITIONER'S CONTENTIONS.

In its brief, petitioner raises three questions for decision by this court (Pet. Br. 2). Question 3 was the only one raised in the court below. That there was no "taking" is answered by the trial court in its opinion and also in the foregoing discussion.

By raising a question of jurisdiction, petitioner discusses Questions 1 and 2 which were not before the trial court, evidently for the purpose of attempting to obtain in this court a trial *de novo* thereon.

We will take up Questions 1 and 2 in the order in which they appear in petitioner's brief.

Petitioner's First Question.

> "(1) Whether under the jurisdictional act which authorizes the Court of Claims to 'adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States

and the Creek Indian Nation or Tribe, or arising under or growing out of any act of Congress in relation to Indian Affairs,' which the Creek Nation or Tribe may have against the United States, there is authority to award a judgment against the United States for damages arising either out of errors of its officers in making or approving a survey of lands, or arising out of its failure in its alleged duty as guardian of the tribe to secure the restoration to the tribe of possession of lands owned by the tribe."

Petitioner is again in error in stating respondent's cause of action, in that it contends that we claim under the common-law liability of a guardian and ward relationship existing between the Creek Nation and the United States. This we could not do, and did not do. We were well aware that under the special jurisdictional act the Creek Nation could not maintain suit to recover on a common-law liability.

A reference to the petition filed in the court below (R. 1, 2, 3) shows that this cause of action is based upon a violation of the Treaties of February 14, 1833, and June 14, 1866, and the failure of the administrative officers of the United States to perform the duties required of them by Congress under the Acts of April 26, 1906, and June 21, 1906, heretofore set forth and discussed.

Under the Treaty of 1833 the United States granted in fee simple to the Creek Nation lands which are now in the State of Oklahoma. Under the Treaty of 1866 the west half of said lands were ceded to the United States, and the east half reserved to the Creek Nation. After providing for the cession, the Treaty further provides:

> "Art. III. * * * the eastern half of said Creek lands, being retained by them, shall, * * * be forever set apart as a home for said Creek Nation."

Again, in Article I of said Treaty of 1866, it is provided that:

> "the United States guarantees them quiet possession of their country, * * *."

Would not the permitted intrusion on the land in question be a violation of these treaty obligations and be sufficient, of itself, to give the Court of Claims jurisdiction of this controversy under the special jurisdictional act?

However, respondent does not need to rely upon the violation of the Treaty of 1866 alone, for Congress thereafter passed the Act of June 21, 1906, after "extensive investigations as to every phase of the controversy," which act declared in explicit language that the land in dispute belonged to the Creek Nation (R. 17).

In the same session, Congress also passed the Act of April 26, 1906, Section 18 of which authorized the administrative officers of the United States to put the Creek Nation in possession of the land by appropriate court action. Surely the failure to perform this plain duty is, of itself, a basis for this claim under the terms of the special jurisdictional Act of 1924.

The cases cited by petitioner are inapplicable to the situation before this court. The case of *Choctaw and Chickasaw Nations* v. *United States,* 75 Ct. Cls. 494, chiefly relied upon by petitioner, holds in effect that the Creek Nation could not sue the United States under the special jurisdictional act for a common-law liability aris-

ing out of a guardian and ward relationship. It is significant that the Court of Claims decided both of these cases, and had the distinction between these cases well in mind when it decided this case in favor of the Creek Nation.

Surely the petitioner could not question the right of Congress to pass the Act of April 26, 1906, and the Act of June 21, 1906, under which acts the Creek Nation now claims the benefits set forth therein, for it is well settled that Congress has plenary power over the administration of the Five Civilized Tribes, *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294. A review of the cases cited by petitioner would lead to this inference.

Summing up respondent's position on this question: It is evident that the Creek Nation does not claim under the common-law liability of a guardian and ward relationship; but, on the other hand, bases its claim upon the violation of the Treaty of 1866, and the failure and refusal of the administrative officers of the United States to perform the duties required of them under the Acts of Congress of April 26, 1906, and June 21, 1906, each of which violations or failures is, of itself, a sufficient basis for this claim of the Creek Nation under the special jurisdictional Act of May 24, 1924.

Petitioner's Second Question.

> "(2) Whether, if the tribe is entitled to recover on the theory that the United States is liable for failure to secure possession of the lands to the tribe, the measure of damages should be the full value of the fee as of the time of filing the petition, as held by the court below, or whether the recovery should be measured, as in trespass, namely, the injury to the land and mesne profits."

Were the Creek Nation *sui juris* there might be merit to this contention of petitioner that the measure

of damages would not be the value of the land, for it could then have sued the trespasser in ejectment and could have recovered possession of the land and also for the injury to the land and mesne profits.

However, petitioner's contention overlooks the fact that the Creek Nation is not *sui juris*, and, although owning the fee to the land in dispute, has been unable to possess it, and cannot now secure possession of it except by action of the officers of the United States under the Acts of 1906, yet because of the failure of the petitioner's officers it is forced to stand helplessly by while others enjoy the possession of its land.

The Creek Nation is not suing the United States for the trespass, for the United States is not the trespasser, although the United States, because of the series of almost unbelievable errors of its officers, is responsible for the trespass. The cause of action is for the failure of the United States to place the Creek Nation in possession of its lands, and for its violation of the treaties and acts of Congress passed for the very purpose of placing it in possession.

Since the passage of the Acts of 1906, nothing has been done to correct this failure of the officers of the United States to comply with their duties under these acts, and the trespass will continue forever because it appears that these officers will not perform their duties under these acts.

With the whole history of this controversy before it, Congress passed the special jurisdictional Act of May 24, 1924, authorizing the Court of Claims to:

> "hear, examine and adjudicate and render judgment in *any* and *all* legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian affairs,

which said Creek Nation or Tribe may have against the United States, * * *" (italics ours).

Section 2 of this same act provides that:

> "*Any* and *all* claims against the United States within the purview of this act shall be forever barred unless suit be instituted or petition filed as heretofore provided in the Court of Claims within 5 years from the date of approval of this act, and such suit shall make the Creek Nation party plaintiff and the United States party defendant" (italics ours).

Congress here selects the forum which is to hear and determine *any* and *all* claims, both legal and equitable, which grow out of treaties and acts of Congress, and then provides that the Creek Nation shall be *forever* barred unless it files suits within five years of its passage. Had the Creek Nation failed to file this suit the claim for the value of this land would have been forever barred, and it would be forever dispossessed of this land.

On the other hand, the officers of petitioner could have prevented this suit by putting the Creek Nation in possession of this land, and could have done so at the time this suit was filed. Instead, the petitioner has elected to defend this action.

Under this unique state of facts, what is the measure of damages due the Creek Nation for the failure of petitioner's officers to perform their duties under the Acts of 1906? To give the Creek Nation merely the mesne profits will not wholly compensate it for this land, for it would still be dispossessed of the land. To make it whole the only measure of damages is the value of the land at the time of the filing of this suit.

The following language of this court in *United States* v. *State of Minnesota*, 270 U. S. 181, 70 L. Ed.

539, 46 Sup. Ct. Rep. 298, is helpful in determining the question before us:

> "* * * The value should be determined on the basis of the prices which would have been controlling had the particular lands been dealt with as they should have been * * *."

How should this land have been dealt with? Had an almost unbelievable series of errors never been committed against it the Creek Nation would be *now* in possession of this land. Had the mandates of Congress, conveyed in the Acts of 1906, been heeded, the Creek Nation would be *now* in possession of this land.

The court below concluded as follows:

> "We think, therefore, the plaintiff is entitled as a matter of law, as well as in equity and good conscience, to receive the value of its lands as of the date of the bringing of its suit."

Under the judgment of the Court of Claims the Creek Nation is made whole, and is, under the terms of the jurisdictional act, forever barred from bringing further suits against the United States for this or any claim not heretofore filed. Moreover, the effect of the present case, if affirmed by this court, will be to establish ownership in the patentees of the United States who are now in possession of the land in question. By accepting the consideration for the complete title to such lands, the Creek Nation will be effectively estopped thereafter to claim title to the land. *Allen* v. *Colorado Central R. R. Co.*, 22 Colorado 238; *Cape Girardeau R. R. Co.* v. *Southern Illinois Bridge Co.*, 215 Mo. 286.

"Wild Tribe" Cases Inapplicable.

The measure of damages in the "wild tribe" cases could have no application to the question in this case.

As stated before, the "wild tribes" hold merely a "right of occupancy" to their lands, the fee being in the United States. An intrusion on their lands would entirely destroy their possession, and would give rise to a cause of action for the value of this "right of occupancy" at the time of its destruction. The case of the *Ft. Berthold Indians* v. *United States*, 71 Ct. Cl. 338, cited by petitioner (Pet. Br. 15) is just such a case; therefore, it would have no application to the case before us. In this case the Creek Nation holds the fee simple title to the land in question, and the intrusion here would not deprive it of the fee to said land.

As few tribes own their lands in fee, the cases will be few indeed that will be affected by this decision.

CONCLUSION.

We respectfully submit that the Court of Claims did not err in compensating the Creek Nation for the value of its land, and in holding that it had jurisdiction under the special jurisdictional Act of May 24, 1924, to rectify the wrong arising and growing out of the violation of the Treaty of 1866, and the failure of the officers of the United States to perform the duties required of them by Congress under the Acts of April 26, 1906, and June 21, 1906.

In the appendix to this brief may be found copies of the various treaties and Acts of Congress that we deem material to this case.

Respectfully submitted,

E. J. Van Court,
Paul M. Niebell,
W. W. Spalding,
Counsel for Respondent.

APPENDIX.

Treaty of February 14, 1833, 7 Stat. 417, 418, 419:

(Article II contains description of the grant of land in fee simple by the United States to the Creek Nation.)

Article III. "The United States will grant a patent, in fee simple, to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States—and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned them."

Treaty of June 14, 1866, 14 Stat. 785, 786, 788:

Article I. "• • • the United States guarantees them quiet possession of their country • • •"

Article III. "• • • the eastern half of said Creek lands, being retained by them, shall, • • • be forever set apart as a home for said Creek Nation."

Article VIII. "It is agreed that the Secretary of the Interior forthwith cause the line dividing the Creek country, as provided for by the terms of the sale of Creek lands to the United States in article third of this treaty, to be accurately surveyed under the direction of the Commissioner of Indian Affairs, the expenses of which survey shall be paid by the United States."

Act of March 3, 1885, 23 Stat. 362, 367:

"Provided, however, That no part of the above sum shall be paid unless the Creek Nation shall, within twelve months, and in pursuance of a resolution of its national council first had and obtained, make and file in the office of the Secretary of State an acceptance and ratification of the survey made and approved by the Department under the treaty of June fourteenth, eighteen hundred and sixty-six; and the additional lands acquired by the United States by the survey shall be held by the United States under the provisions of the treaty of June fourteenth, eighteen hundred and sixty-six; in all, one hundred and ten thousand nine hundred and seventy-three dollars and thirty cents."

Act of March 1, 1889, 25 Stat. 757, 758:

"1. That said Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line surveyed and established under the said treaty of eighteen hundred and sixty-six, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said nation."

Act of May 2, 1890, 26 Stat. 81, 82:

"Sec. 1. That all that portion of the United States now known as the Indian Territory, except

so much of the same as is actually occupied by the five civilized tribes, • • • is hereby erected into a temporary government by the name of the Territory of Oklahoma. The portion of the Indian Territory included in said Territory of Oklahoma is bounded by a line drawn as follows: • • • thence down said river to the west line of the Creek country, thence along said line to the northwest corner of the Creek country, • • •"

(The west line of the Creek country referred to is the Bardwell line, R. 8.)

Act of Feb. 13, 1891, 26 Stat. 749, 750:

"Article I. The said the Sac and Fox Nation hereby cedes, conveys, transfers, surrenders and forever relinquishes to the United States of America, all their title, claim or interest, of every kind or character in and to the following described tract of land or country in the Indian Territory, to-wit: • • • Beginning at a point on the left bank of the North fork of the Canadian River, where the West boundary line of the Creek Reservation crosses the same; thence North with said West boundary line to the right bank of the Cimarron River, • • •"

(The west line of the Creek Reservation referred to is the Bardwell line, R. 9.)

Act of April 26, 1906, 34 Stat. 137, 144:

"Sec. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes • • • for • • • recovery of any land claimed by any of said tribes • • •, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits. • • •"